



## **SALES TAX EXEMPTION FOR BUILDING MATERIALS USED IN STATE CONSTRUCTION PROJECTS**

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### **ISSUE**

Explain the state sales and use tax exemption for building materials that contractors purchase for use in state construction projects. How does the Department of Revenue Services (DRS) enforce this exemption? Do other states provide a comparable one?

### **SUMMARY**

State law allows contractors to purchase building materials for use in construction contracts with state agencies and other exempt entities (e.g., municipalities and nonprofit organizations) without paying sales and use tax on them. The exemption applies to materials permanently installed or placed in a construction project, such as the bricks and mortar used to construct an office building. It does not apply to the equipment, tools, and supplies the contractor uses to fulfill the contract (e.g., scaffolding, tractors, pipe cutters, trowels, wrenches) (Conn. Agencies Regs. § [12-426-18](#)).

To receive the exemption, contractors must present to sellers a DRS certificate attesting that the materials will be used for an exempt entity's project. The contractor must sign the certificate and declare under penalty of false statement that the exempted items will be permanently installed or placed in the exempt entity's project. Sellers do not have to prove that a sale is exempt from the sales and use tax if the applicable certificate was properly completed and taken in good faith. According to Susan Sherman, DRS's legislative program manager, DRS uses its audit process to verify that purchases for which contractors have claimed the exemption were eligible.



We identified 15 other states with comparable sales and use tax exemptions for building materials used in state construction projects. Like Connecticut, these states distinguish between materials that become part of the project and materials used or consumed to complete it. In 10 of the states, the exemption applies only to building materials that are physically incorporated into the construction project (e.g., lumber, windows, doors, and plumbing and electrical materials). In the remaining five states (Massachusetts, Missouri, New Jersey, Texas, and Vermont), it also applies to tools and supplies that are consumed in the construction but are not incorporated into the structure (e.g., nonreusable concrete forms, sandpaper, and garbage bags). In all of the states, the exemption also applies to construction contracts for other designated governmental entities; in most, it applies to charitable nonprofits as well.

## **SALES AND USE TAX EXEMPTION FOR AGENCY CONTRACTORS**

### ***Scope***

Connecticut law exempts contractors (including subcontractors) from paying sales and use taxes on building materials they purchase for projects being performed under contract with state agencies and other exempt entities, including the U.S. government, municipalities, nonprofit hospitals, and other nonprofit organizations (Conn. Agencies Regs. § [12-426-18](#)).

The contractor exemption applies only to materials and supplies permanently installed or placed in a project, such as the bricks and mortar used to construct an office building. It does not apply to the equipment, tools, and supplies the contractor uses or consumes in fulfilling a contract. Contractors are also exempt from paying sales and use taxes on services resold to state agencies or exempt entities under a construction contract. The exemption applies only to services that will become an integral and inseparable component of the building contract (e.g., plumbing and electrical services). It does not apply to services consumed by the contractor, such as those of a secretary hired to process and file project-related documents (CGS § [12-410\(5\)](#)).

### ***Obtaining the Exemption and Verifying Eligibility***

To receive the exemption, contractors must present DRS's CERT-141, *Contractor's Exempt Purchase Certificate* (see Figure 1) when purchasing building materials from a seller (DRS, *Building Contractors' Guide to Sales and Use Taxes*, 2007).

The certificate is designed to ensure that contractors, and the goods they purchase, qualify for the sales and use tax exemption. CERT-141 requires contractors to identify the project, the contracting agency or entity, and the amount of materials and supplies purchased for the project. If a contractor cannot identify the exact amount of materials that will be installed or placed in the project, it must provide an estimate, but it is liable for taxes on any materials or supplies that are not ultimately installed or placed in the project.

Figure 1: DRS CERT-141

The contractor must sign the certificate and declare under penalty of false statement that the exempted items will be permanently installed or placed in the project. The penalty is a maximum \$5,000 fine, up to five years in jail, or both. The contractor must also acknowledge that it is liable for taxes and penalties if this condition is unmet. Lastly, it must keep, for at least six years, the certificate and any records supporting its use, including those showing where and how the exempted materials and supplies were used.

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 (Rev. 03/09)

CERT-141

**Contractor's Exempt Purchase Certificate**

**General Purpose:** Contractors for the repair, alteration, improvement, remodeling, or construction of real property use this certificate to purchase materials and supplies to be installed or placed in a project being performed under contract with an exempt entity. The materials and supplies, including tangible personal property that remains tangible personal property after its installation or placement, must remain in the project after its completion. If the tangible personal property is not used in the manner described above, a contractor who claimed an exemption owes use tax on the total price of the tangible personal property.

Wherever the term contractor is used in this certificate, it includes subcontractors of the contractor performing a contract with an exempt entity.

**Exempt entity** means any person entitled to make purchases of tangible personal property exempt from sales and use taxes under the statutory authority listed in the instructions.

Name of exempt entity	Address	CT Tax Registration Number (If none, explain.)	Federal Employer ID Number
Address of project			
Type of exempt entity (See instructions.)			
<input type="checkbox"/> Connecticut state government: Enter the exemption number. _____		<input type="checkbox"/> Connecticut municipality	
<input type="checkbox"/> Charitable or religious organization: Enter the exemption number if any. _____		<input type="checkbox"/> Federal government	
<input type="checkbox"/> Other (Explain.) _____			
Name of purchaser	Address	CT Tax Registration Number (If none, explain.)	Federal Employer ID Number
Name of seller	Address	CT Tax Registration Number (If none, explain.)	Federal Employer ID Number
Provide a written description of each item purchased. Attach additional sheets if necessary.			
Check one box: <input type="checkbox"/> Blanket certificate <input type="checkbox"/> Certificate for one purchase only			

Sellers do not have to prove that a sale is exempt from the sales and use tax if the applicable certificate was properly completed and taken in good faith. But a seller's good faith will be questioned if he or she knew, or should have known, facts suggesting that the sale did not qualify for the exemption (e.g., the seller knows the contractor intends to use the materials for a private construction project).

## COMPARABLE EXEMPTIONS IN OTHER STATES

We identified 16 states, including Connecticut, that exempt the sale of building materials incorporated or used in state construction projects. Table 1 lists the states providing the exemption and briefly describes the applicable property and the exempt entities. As it shows, all of the states extend the exemption to other designated governmental entities; most extend it to charitable nonprofit organizations as well (i.e., those organized for charitable, religious, educational,

scientific, literary, or other specified purposes). In Missouri, the exemption applies only to specified state agencies.

In 11 states, including Connecticut, the exemption applies only to building materials that are physically incorporated into the construction project. In the remaining five states (Massachusetts, Missouri, New Jersey, Texas, and Vermont), it also applies to supplies that are consumed in the construction but are not incorporated into the structure.

**Table 1: State Sales Tax Exemptions for Building Materials Used in State Construction Projects**

<b>State and Citation</b>	<b>Applicable Property</b>	<b>Exempt Entities</b>	
		<b>State Agencies and Entities</b>	<b>Other Entities</b>
<b>Alabama</b>  Ala. Admin. Code 810-6-1-.46(3)  Ala. Admin. Code 810-6-3-.77	Tangible personal property to be incorporated into real property pursuant to a contract with a governmental entity	All	Counties  Incorporated municipalities  Educational institutions (state, county, or municipal)  Industrial or economic development boards or authorities exempt from state sales and use tax  Other governmental agencies exempt from state sales and use tax
<b>Colorado</b>  Colo. Rev. Stat. Ann. § 39-26-708  1 Colo. Code Regs. § 201-5:SR-10	Building materials purchased by contractors for construction work on property owned by an exempt entity; includes only items that become a part of the structure	All	U.S. government  Political subdivisions <sup>1</sup>  Schools (public and nonprofit)  Charitable nonprofits

<sup>1</sup> Political subdivisions are governmental units, such as counties, municipalities, and school districts

Table 1 (continued)

<b>State and Citation</b>	<b>Applicable Property</b>	<b>Exempt Entities</b>	
		<b>State Agencies and Entities</b>	<b>Other Entities</b>
<b>Connecticut</b>  Conn. Agencies Regs. § <a href="#">12-426-18</a>	Materials and supplies to be installed or placed in projects being performed under contracts with exempt entities and will remain in the projects after their completion	All	U.S. government  Political subdivisions  Acute care, for-profit hospital operating as a sole community hospital (i.e., Sharon Hospital)  Charitable nonprofits (and cemetery companies)  Connecticut Technology Park  Materials Innovation and Recycling Authority  Tourism districts  Solid waste-to-energy facilities  Municipal or regional resource recovery authorities  Metropolitan Transportation Authority or subsidiary in connection with New Haven commuter rail service

Table 1 (continued)

State and Citation	Applicable Property	Exempt Entities	
		State Agencies and Entities	Other Entities
<b>Illinois</b>  Ill. Admin. Code tit. 86, § 130.2075	Materials for incorporation into real property owned by exempt entities	All	Governmental bodies  Charitable nonprofits
<b>Indiana</b>  45 Ind. Admin. Code 2.2-5-24  Ind. Code Ann. § 6-2.5- 5-16	Tangible personal property to be incorporated into real property owned by a governmental entity and used predominantly to perform its governmental functions	All	Political subdivisions
<b>Iowa</b>  Iowa Admin. Code r. 701-19.12(422,423)	Building materials, supplies, or equipment for use in the performance of a construction contract with an exempt entity; includes only items that are incorporated into real property	All	Governmental bodies or political subdivisions  Private nonprofit educational institutions  Nonprofit private museums
<b>Maine</b>  Me. Rev. Stat. Ann. tit. 36, § 1760(61)	Tangible personal property that is to be physically incorporated in, and become a permanent part of, real property for sale to a government agency or organization exempt from sales and use tax	All	U.S. government  Political subdivisions  Charitable nonprofits  Any other sales tax-exempt organizations

Table 1 (continued)

<i>State and Citation</i>	<i>Applicable Property</i>	<i>Exempt Entities</i>	
		<i>State Agencies and Entities</i>	<i>Other Entities</i>
<b>Massachusetts</b>  Mass. Gen. Laws Ann. ch. 64H, § 6(f)	Building materials consumed during, used in, or incorporated into construction, reconstruction, alteration, remodeling, or repair of buildings or structures or other public works owned by exempt entities; includes rental charges for vehicles, equipment, and machinery used on site	All	U.S. government  Political subdivisions  Charitable nonprofits  Other specified organizations
<b>Missouri</b>  Mo. Code Regs. Ann. tit. 12, § 10- 112.010(3)(D)	Tangible personal property and materials incorporated into or consumed in constructing, repairing, or remodeling real property for an exempt entity	Missouri Department of Transportation  Missouri Highways and Transportation Commission  Public higher education institutions	U.S. government  Political subdivisions  Charitable nonprofits  Public or private elementary and secondary schools  Private higher education institutions  Jackson County Sports Complex Authority



Table 1 (continued)

State and Citation	Applicable Property	Exempt Entities	
		State Agencies and Entities	Other Entities
<b>Nebraska</b>  316 Neb. Admin. Code Ch. 1, 017	Buildings materials that are incorporated into the building or structure and which subsequently are owned by the exempt entity, provided the entity follows certain procedures	All	U.S. government  Political subdivisions  Specified charitable nonprofits, including hospitals and educational institutions  Licensed child care agencies for full-time care and custody of children  Other specified organizations
<b>New Jersey</b>  N.J. Stat. Ann. § 54:32B-9  N.J. Admin. Code §§ 18:24-5.3 & 18:24-5.5	Materials and supplies for exclusive use in fulfilling a contract to improve or repair the real property of an exempt entity; includes supplies that will be entirely consumed on the project	All	U.S. government  United Nations or any international organization of which the United States is a member  Charitable nonprofits  Various other organizations exempt from state sales tax  Certain qualified businesses or housing sponsors

Table 1 (continued)

<b>State and Citation</b>	<b>Applicable Property</b>	<b>Exempt Entities</b>	
		<b>State Agencies and Entities</b>	<b>Other Entities</b>
<b>New York</b>  N.Y. Comp. Codes R. & Regs. tit. 20, §§ 528.16, 528.17 & 541.3	Tangible personal property for use in erecting or improving an exempt entity's real property that becomes an integral component of the property	All	U.S. government  Political subdivisions  United Nations or any international organization of which the United States is a member  Certain charitable nonprofits  Various other entities exempt from state sales and use tax
<b>Ohio</b>  Ohio Admin. Code 5703-9-14  Ohio Rev. Code Ann. §5739.02(B)(13)	Building and construction materials for incorporation into an exempt entity's real property	All	U.S. government  Political subdivisions  Religious or nonprofit organizations  Certain sports facilities  Horticulture or livestock businesses  Nonprofit hospitals  Tax-exempt properties in other states

Table 1 (continued)

State and Citation	Applicable Property	Exempt Entities	
		State Agencies and Entities	Other Entities
<b>Rhode Island</b>  44 R.I. Gen. Laws Ann. § 44-18-30(5)  R.I. Code R. 60-1-167:1	Materials and supplies essential to a construction contract with an exempt entity that are to be utilized in the project's construction	All	U.S. government  Political subdivisions of Rhode Island and other states  Charitable nonprofits
<b>Texas</b>  34 Tex. Admin. Code §§ 3.291 & 3.357	Tangible personal property that is incorporated into real property under a construction contract with, or for the primary use or benefit of, an exempt entity and consumable items that are necessary and essential to the contract and are completely consumed at the job site	All	U.S. government  Political subdivisions  Bordering states and governmental units if they exempt or do not impose a tax on similar items  Charitable and other specified nonprofits
<b>Vermont</b>  Vt. Stat. Ann. tit. 32, §9743	Building materials and supplies to be used (consumed or physically incorporated) in the construction, alteration, or repair of buildings or structures owned by exempt entities	All	U.S. government  Political subdivisions  Charitable nonprofits  Agricultural organizations  Specified development organizations and facilities

Source: CCH State Tax Smart Charts; State statutes and regulations

RP/JR:cmg